IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 567 of 1997
In
SPECIAL CIVIL APPLICATION No. 502 of 1995

[This LPA is not arising out of SCA No.502 of 1994. Office to correct the number at all places]

with
LETTERS PATENT APPEAL No.568 of 1997
in
SPECIAL CIVIL APPLICATION No.10253 of 1995

with
CIVIL APPLICATON No.5130 of 1997
in
LETTERS PATENT APPEAL No.567 of 1997

with
CIVIL APPLICATION No.5133 of 1997
in
LETTERS PATENT APPEAL No.568 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VETERNARY OFFICER & 1 - Appellant(s)

Versus

RAJENDRASINH RANJITSINH JHALA - Defendant(s)

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Appearance :
MR HS MUNSHAW for Petitioner No(s).: 1,2.
MR RC PATHAK for Respondent No(s).: 1.
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Date : 22/08/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The facts necessary for disposal of the present Letters Patent Appeal are that the present respondent was appointed as a daily wager to work for 2 hours everyday with effect from 25.07.1986, thereafter, he was offered work for 4 hours a day from January 1987 to May 1988, and 6 hours a day from June 1988 to 18th June 1989. Appointment orders state that the respondent was appointed on a vacant post, but will be removed from service after a person regularly appointed is made available to the appellant. After a peon was regularly employed after the selection with

effect from 19.06.1990, the respondent's services were terminated. Being aggrieved by the order of termination and treating the same to be illegal retrenchment the workman opted for a reference, the same was registered as Reference No.661 of 1991 in the Labour Court, Rajkot. By order/ award dated 01.06.1994 the Labour Court directed the employer to reinstate the respondent in service with continuity and make payment of the salary paid to the regularly appointed employee. However, the backwages for the period from the date of termination till the date of award were not allowed in favour of the workman. Being aggrieved by the direction of reinstatement, the appellant filed Special Civil Application No.502 of 1995 while against the non-award of the backwages the workman filed Special Civil Application No.10253 of 1995.

2. It is to be noted that after the award was made by the Labour Court the workman was reinstated and after giving him due opportunity of hearing and observing the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as “the Act”), he was again removed from the services with effect from 22.11.1995. It is to be noted that Special Civil application

No.10253 of 1995 was filed by the workman on 04.12.1995. But later on by incorporating certain amendments in his writ application the workman challenged the order of termination dated 22.11.1995. In the petition he also submitted to the Court that the workman-petitioner was entitled to the benefits of Government Resolution dated 17.10.1988 and the High Court be pleased direct the respondent-Panchayat to give the pay scale to the workman as prescribed in the said Govt. Resolution with 18% interest to the petitioner. Both the matters were heard together. The learned Single Judge by his decision dated 21.03.1997 dismissed the writ application filed by the Panchayat, allowed the writ application filed by the workman, granted full backwages and set aside the order dated 22.11.1995 and directed reinstatement of the workman with full backwages from the date of his second termination.

3. Being aggrieved by the said judgement of the learned Single Judge, the Panchayat is before this Court.

4. Learned counsel for the appellant submitted that the workman was appointed with a clear stipulation

that on availability of regularly selected employee he would be removed from the services, therefore, if the workman continued for a longer period, he cannot lodge a claim to a regular appointment. He also submitted that as there was a ban imposed by the State Government against the appointment, the Panchayat being in need of a Peon had to continue with the workman.

5. In the opinion of this Court a ban imposed by the State Government would not arrest the operation of the law. When the law says that if a person is appointed temporarily and he works for 240 days in a year preceding the order of retrenchment, then the working for 240 days, for the purposes of section 25B of the Act would be to be continuous service and in a case like that without observing the provisions of law, such a person cannot be retrenched. In the present matter the workman had worked for more than 3 years, undisputedly more than 240 days. If that be so and even if the order appointing him is stipulating something else, then too the law would take its own course. So far as the award made by the learned Labour Court in relation to reinstatement made in favour of the workman is concerned it deserves to be

upheld.

6. Learned counsel for the appellant further submitted that in the writ application being Special Civil Application No.10253 of 1995 filed by the workman the scope of writ application could not be enlarged. The submission is that if the reference was in relation to a particular subject, then in any proceedings arising from such reference cannot include anything which is not within the scope of the reference. The submission is that if the reference was in relation to the termination dated 19.06.1990, then the termination dated 22.11.1995 could not be examined in these proceedings. It is also submitted that in the judicial hierarchy, every appellate or revisional court or even the court which is exercising powers of superintendence will have to confine its approach to the scope of the reference because if the Labour court could not give anything beyond the reference, then any appellate or revisional court would not be entitled to give anything which is not within the jurisdiction of the Labour court. It is also submitted that the reference was confined to termination dated 19.06.1990 and as such termination dated 22.11.1995 if could not be examined in the reference proceedings,

then the High Court especially the learned Single Judge had no jurisdiction to grant amendment and enlarge the scope of the proceedings.

7. Learned counsel for the respondent workman on the other hand submitted that in his writ application, wherein the workman had prayed for backwages, the workman had challenged the subsequent termination dated 22.11.1995 and as amendment had already been allowed, the learned Single Judge had jurisdiction to examine the correctness, validity and propriety of the termination dated 22.11.1995. It is also submitted that the subsequent termination though was not a part of the original reference, but the High Court could always examine the correctness of the said termination order as the High Court would have wider powers in exercise of its jurisdiction under Article 226 of the Constitution of India.

8. It is trite law that a matter is to be fought on the original cause of action. A cause of action is nothing but a bundle of facts which allow a person to come to a competent forum to ventilate his grievances and ask for redressal of grievances. The ordinary law is that the courts shall consider the

case as is founded on the original cause of action and subsequent events ordinarily would not be taken into consideration. The exception to the general rule is that any subsequent event which has material bearing on the original cause of action and by taking into consideration the subsequent event, the relief as claimed can be granted or refused, then such subsequent events can be taken into consideration. In any case, the subsequent event must be associated with and attached to the original cause of action. Every subsequent cause of action cannot be raised as a ground of attack or for claiming some relief which could not have been granted in the original proceedings.

9. In the present matter the subsequent termination dated 22.11.1995 was subsequent to the order passed by the learned Labour Court. The learned Labour court had directed reinstatement of the workman and in accordance with the award the workman was employed and thereafter he was issued a notice and after complying with the provisions of the Act the services of the workman were brought to an end. The subsequent issuance of the notice, grant of opportunity to the workman, termination of services on 22.11.1995 had nothing to do with the first cause of

action. The reference was confined to the termination dated 19.06.1990 and as such even in a pending reference the Labour court could not examine the correctness, validity and propriety of the termination order dated 22.11.1995. Simply because the appellate court had wider powers it cannot include every dispute within the sweep of its jurisdiction.

10. An appellate court, in fact, steps into the shoes of the first court, though in its independent rights it is entitled to exercise much wider power, but as appellate court or revisional court, it cannot cross the limits which the first court could not. In a criminal matter where the learned Magistrate has jurisdiction to award three years sentence in a case of section 467 of Indian Penal Code, i.e. forgery of valuable security, then any court hearing the appeal cannot enhance the sentence to life, which is maximum awardable because the trial court had jurisdiction to award a maximum of three years only. In a civil matter, if a particular court has particular limited jurisdiction, then it can grant a decree to that extent only and nothing beyond that. Any appellate court which in its independent jurisdiction could award any amount to an unlimited extent while

hearing the appeal from the original cause, would not be entitled to exercise its powers as an original court of unlimited jurisdiction. The same would hold good for the High Court when it is exercising its powers under Article 226/ 227 of the Constitution of India in a matter which arises from a labour dispute. The High Court would only examine correctness, validity and propriety of the order passed by the Labour Court. It cannot grant a relief which could not be granted by the Labour court in exercise of its jurisdiction.

11. In the present matter taking advantage of the pendency of the writ application the present workman introduced an amendment which otherwise could not be introduced.

12. One of the principles for grant of amendment would be that whether on the independent cause of action which is sought to be introduced in a pending matter whether an independent proceeding before the appellate court or revisional court or High Court be maintainable. If the independent proceedings before the appellate or revisional court or High Court would not be maintainable, then such a subsequent event/

cause of action could not be introduced in a pending matter. In the present matter no writ could have been issued against the Taluka Panchayat by the High Court under Article 226 of the Constitution of India unless the facts were examined by the Labour Court in a duly constituted reference. In the present matter, in our considered opinion, the learned Single Judge had no jurisdiction to grant the amendment. The amendment allowed by the learned Single Judge deserves to be and is accordingly quashed.

13. As we are setting aside the introduction of the amendment, we are not required to examine the validity of the order dated 22.11.1995.

14. We restore the award made by the learned Labour Court but however, would direct that in light of the termination order dated 22.11.1995, the present workman would not be entitled to any benefits with effect from 22.11.1995.

15. It is, however, made clear that the workman would be entitled to an approach appropriate forum to challenge the order dated 22.11.1995. Both the Letters Patent Appeals to the extent indicated above are

allowed. No costs.

16. The Civil Applications stand disposed of.

(R.S. GARG, J.)

(RAVI R. TRIPATHI, J.)

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